



Federal Communications Commission
Washington, D.C. 20554

November 9, 2007

DA 07-4544

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

New York Television, Inc.
WNYO-TV
c/o Pillsbury Winthrop Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128

Re: New York Television, Inc.
WNYO-TV, Buffalo, New York
Facility ID No. 67784
File No. BRCT-20070130AJE

Dear Licensee:

This refers to your license renewal application for station WNYO-TV, Buffalo, New York.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").¹

On January 30, 2007, you filed the above-referenced license renewal application for station WNYO-TV. In response to Section IV, Question 5 of that application, you certify that, during the previous license term, WNYO-TV failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19, you indicate that station WNYO-TV violated the children's television commercial limits and policies on September 24, 2002 and October 18, 2003. First, you state that one conventional

¹ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

overage occurred on October 18, 2003, and was 90 seconds in duration. You indicate that this overage was caused by the WB Network's GDMX commercial insertion system.

Second, you report that on September 24, 2002, station WNYO-TV aired a commercial for the Gameboy Advance E-Reader during the "Pokemon" program. According to your description, three "Pokemon" game cards were shown for approximately 1.04 seconds. You also indicate that the "Pokemon" game cards were partially hidden and only the letters "MON" were identifiable. You state that the "Pokemon" characters were not identifiable and were not verbally identified during the commercial. You maintain that the *de minimis* appearance of these cards could not have confused the viewer and that this occurrence does not violate the children's programming commercial limits rules.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs. S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989). Thus, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."² Accordingly, in interpreting and applying the Commission's policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults.³

With respect to the station's broadcast of the commercial for the Gameboy Advance E-Reader, although you assert that the "Pokemon" game cards appeared for approximately 1.04 seconds during the commercial, it is well-established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.⁴ Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Gameboy commercial and the "Pokemon" program regardless of whether any "Pokemon" character is depicted given the image of a "Pokemon"

² *Children's Television Programming*, 6 FCC Rcd at 2118.

³ See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 12 FCC Rcd 19504, 19505 (MMB 1997) (*Scripps Howard*), *aff'd* 9 FCC Rcd 2547 (MMB 1994).

⁴ *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); see also *WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for "Spirit of Mickey" home video showing brief image of Donald Duck on cover of video aired during "Quack Pack" program); *Act III Broadcasting License Corp. (WUTV-TV)*, 10 FCC Rcd 4957 (1995), *aff'd*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program "Goof Troop").

game card contained in the commercial and the consequent likelihood that children may associate it with the program.

Regarding the reason given for the 90 second overage, the fact that it was erroneously inserted into the program by station WNYO-TV's television network does not relieve WNYO-TV of responsibility for the violation. In this regard, the Commission has consistently held that a licensee's reliance on a program's source or producer for compliance with our children's television rules and policies will not excuse or mitigate violations which do occur. *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (MMB 1995).

While we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violations described in your renewal application appear to have been isolated occurrences. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for the violations of the children's television commercial limits rule and policies described in station WNYO-TV's renewal application. We remind you that the Commission expects all commercial television licensees to comply with the limits on commercial matter in children's programming.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at the address listed above, and to its counsel, Kathryn Schmeltzer, Esquire, Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau